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Current Topics.

The Matrimonial Causes Report.

THE Matrimonial Causes (Trial in the Provinces) Committee presented its report to the Lord Chancellor on 25th October. The Committee, which consisted of ten persons (including two High Court judges, Mr. Justice LEWIS and Mr. Justice HODSON), a county court judge (His Honour Judge FINNEMORE), and an Official Referee (His Honour J. G. TRAPNELL, K.C.), sat under the chairmanship of Sir RALPH WEDGWOOD, and held eighteen meetings and received evidence from judges, barristers and solicitors interested in divorce and circuit work. Among those who gave evidence were the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division. The report sets out the details of the existing law as to the venue for matrimonial causes. It points out that an order may be made under s. 70 (5) of the Supreme Court of Judicature (Consolidation) Act, 1925, prescribing the classes of matrimonial causes which may be tried at assizes, and that a fresh prescription may be made at any time adding to or diminishing the classes of causes triable or even prescribing that all such causes be triable. The number of assize towns at which matrimonial causes may be tried may be increased or diminished by amendments to the Matrimonial Causes Rules, which may also be amended to allow all classes of matrimonial causes to be commenced and prosecuted in a district registry or to increase or diminish the number of district registries in which matrimonial causes (of whatever class) may be commenced and prosecuted. The report proceeds to trace the history of the present matrimonial jurisdiction of the High Court from as far back as the "Doctors' Commons" of "Sketches by Boz" and "David Copperfield" down to the Poor Persons Procedure of the present day. The number of district registries to which jurisdiction in poor persons' cases has been committed now stands at forty-four out of a total of 115. So far as possible the district registries selected are those where the High Court Registrar who exercises the jurisdiction is an official in the whole-time service of the State. After examining the well-known differences between a divorce suit and an action at common law, arising mainly out of the State's direct interest in the maintenance of the institution of marriage and the status of the parties and their children, the report states that it may be doubted if there is now any good reason for maintaining the present distinction between the Principal Probate Registry and the district registries, especially when it is borne in mind that proceedings in a divorce suit are bound to be carried on "more speedily, cheaply and conveniently" in the locality where the parties reside. The report emphasises the injustice of the present system to the country solicitor who is expected to bear the burden of acting gratuitously in a poor person's case, but is debarred from obtaining the full profit which would naturally accrue to him from clients who are outside the scope of the Poor Persons Rules, and sees a portion of that profit diverted to London.

The Recommendations.

THE district registrars, the report states, are "an intelligent and highly skilled body of men," and it is recommended that the jurisdiction of selected district registrars be enlarged so that interlocutory proceedings in a matrimonial cause of whatever type may be commenced and prosecuted up to trial in whatever selected district registry the petitioner may choose for the purpose. Rules should allow the respondent for good reasons to transfer the proceedings to another district registry or to London. Interlocutory proceedings after trial should, however, in all cases, be retained for the Principal Registry in London, as they raise peculiarly technical and difficult issues, which may frequently have to be decided by the judge himself. It should, however, be possible for maintenance proceedings, whether instituted before or after trial, to be dealt with in the provinces, with provision for their transfer to London in appropriate cases. With the object of bringing justice as near as possible to the door of the litigant, discretion cases and defended cases should be triable at assizes, and, indeed, the report recommends that all classes of matrimonial causes should be triable at assizes. After carefully examining the alternatives of swiftly transferring the jurisdiction to assizes and setting up special divorce assizes (the latter proposal having been put forward by the President of the Probate, Divorce and Admiralty Division), the report suggests that having regard to the possible overlapping and competition in dignity between two separate assize systems, it should be possible to arrange for the attendance of a judge of the Probate, Divorce and Admiralty Division as one of the Judges of Assize to hear and dispose of the matrimonial causes, and thus to relieve the judges of the King's Bench Division of this work. The smaller towns, the report states, which now deal with matrimonial causes, should be included in the extension, leaving the whole of these causes to be heard as part of the ordinary work of assizes. The recommendations should call for no extension in the list of assize towns authorised to deal with divorce work. It will, however, be necessary to increase the number of His Majesty's judges, one of the main reasons being the "unmistakable evidence of an increase in the amount of divorce work coming before the courts." Two, and possibly more additional appointments will be required. As to the question of the sufficiency of counsel for the task, the report states that the difficulty will probably solve itself, if, as is believed, the greater number of barristers are already connected with circuits. If not, the report states, it may be necessary to take special steps to enable London barristers to go on circuit. The committee considers that the present programme of assizes need not be altered, and a commissioner or commissioners should be appointed for any emergency. Provision will have to be made in the larger assize towns for lodgings and courts suitable to the dignity of the office of any additional divorce judges that may have to attend. The duty of the local district registrar to sit in court to assist the judge should be transferred to some appropriate assize official, owing to the extra call on the time of district registrars. The report rejects the proposals (*a*) that county court judges should be given divorce jurisdiction, (*b*) that commissioners should be appointed with exclusive divorce jurisdictions in the provinces. It further states that there should at present be no extension either in the list of district registries or in the list of assize towns prescribed for the institution and trial of poor persons' matrimonial causes. The report (Cmd. 6480) is dated 25th October, 1943, and is published at 3d. The estimated cost of printing and publishing was £20 2s. 6d., and the total estimated cost of the committee was £124 15s. Having regard to the extent of the Committee's labours since 15th December, 1942, when the first witness was heard, and to the good fruit produced, none can be heard to say that this is not "a little money well spent."

Wives' Housekeeping Savings.

A CONTROVERSY of which it may almost be said "*quot homines tot sententiae*," though not perhaps "*quot uxores tot sententiae*," has been revived by the recent decision of the Court of Appeal in *Blackwell* v. *Blackwell and Another* (*ante*, p. 394), following *Montgomery* v. *Blows* [1916] 1 K.B. 899. On 3rd November, Dr. EDITH SUMMERSKILL asked the Attorney-General in the Commons whether his attention had been drawn to the recent decision, and whether he would consider amending the Married Women's Property Act, 1882, in order that a wife who exercised thrift might not be penalised and her work in the home might be given some monetary recognition. Sir DONALD SOMERVELL replied that the case in question turned on its own facts. Husband and wife were free to enter into any arrangements with regard to money or other property which they liked. In the absence of any special arrangement the balance of money given by one to the other for a special purpose and not used for that purpose belonged, according to ordinary principles, to the giver. Legislation, even if desirable in principle, would be very difficult. It would have to define the services and provide how the monetary recognition was to be valued. In any case the Government could not in present circumstances consider legislation of this kind. Mr. E. PETHICK LAWRENCE wrote on 1st November to *The Times* of 5th November that the court decision "once more revealed,

as in a flash, to married women their complete lack of economic status." "The goods and services," he wrote, "created as part of the nation's wealth by women as workers, both in the home and outside it, have in present times to be taken into account in all economic calculations. The family and the community are dependent for their life on all men and women workers equally. The law, to be just, must reflect this actual position." The law on the subject is in no doubt. A married woman is not as such the servant of her husband. Such a doctrine would be repugnant to common sense and to justice, as the Court of Appeal pointed out in the *Blackwell* case. She may, however, be his agent to pledge his credit for necessaries if not supplied with a sufficient allowance for that purpose (*Morel Bros.* v. *Westmorland* [1904] A.C. 11), or she may be endowed by her husband's conduct with authority to pledge his credit (*ibid.*). No case has yet gone the lengths of deciding that in the limited classes of case where a married woman has implied authority to act for her husband she is entitled to reasonable remuneration for her agency as are other agents (*Prickett* v. *Badger* (1857), 1 C.B. (N.S.) 296). A wife is sometimes popularly referred to as a "partner," but it would be difficult to argue that she is carrying on a business in common with a view of profit "so as to be legally a partner within s. 1 of the Partnership Act, 1890." Morally she might claim a share of the profits, but she would object to being saddled with joint liability for her husband's debts. The only true guide to married bliss, at any rate so far as property is concerned, should be that, whoever is the treasurer, "the property of friends is held in common," as Plato says in his "Republic." It may well be argued that any differences of opinion between husband and wife about property rights are signs *pro tanto* of a falling short from the perfection of married harmony. This seems to be consistent with the experience of lawyers in the courts, for these and similar questions only seem to come before the courts when they arise out of and in the course of matrimonial differences. Whatever be the truth of the argument, however, the law on the subject according to the official view, will have to "stay put" for the present.

Pay as You Earn.

THE scheme of income tax payment which has now become known in popular language, and even in Parliamentary language, as "pay as you earn" is to be extended, according to an assurance given by Sir JOHN ANDERSON in the Commons on the third reading on 2nd November of the Wage Earners' Income Tax Bill, now re-christened the Income Tax (Employment) Bill by provisions either in the next Finance Bill or in a special Finance Bill, to the whole range of Sched. E taxpayers "as the House would obviously desire." Sir JOHN proposed that the Bill to be passed now should extend pay as you earn, or, as he sometimes called it, lend-lease, not only to wage-earners, manual and non-manual, but also to salaried workers up to the £600 limit. The new arrangement with regard to Sched. E salaries above that limit, if the House saw fit to pass the next Finance Bill, in which these provisions would be included, would make no practical difference to the date at which the benefit of pay as you earn is given to the taxpayers not included in the Bill as it stood, because it could perfectly well be arranged that the change in the cases not now covered should take effect from the same date, the beginning of the next income tax year. The Inland Revenue authorities would have no difficulty in making their arrangements in that connection on the footing that the plan was expected to extend over the whole range. The arrangements would not extend to members of the Armed Forces, as it would be quite impracticable to make the necessary arrangements. It must not be supposed that the mere application of the principle of pay as you earn will automatically resolve all difficulties and dispel all possible criticism. One criticism that has been made as to the new proposed system is that wage staffs will be heavily overburdened with new work, and the assistance to be afforded them by revised tax tables is at present of untried value. Moreover, the multiplicity of codes may well produce a "bottleneck" in the work of the wage staffs. The sooner the full proposals of the Government as to the method by which tax deductions are to be assessed are published the smoother will be the adjustment of industry to the new arrangements. Meanwhile, it can be agreed that the present measure, and its successor, will represent "a very real advance in the technique of our income tax system."

Address by Chairman of the War Damage Commission.

WE recently published in this Journal an article (*ante*, p. 341) amplifying certain warnings that had been uttered by the War Damage Commission against selling war-damaged properties without careful consideration beforehand of the questions whether the compensation for the damage will be on a value basis, a cost of works basis, or a mixed value and cost of works basis, and to whom the payment will be made. An article in the October issue of *The Law Society's Gazette* again emphasises that "whenever possible, vendors would seem to be well advised to await the determination of the War Damage Commission whether a cost of works payment or a value payment is appropriate before selling their properties." "If, however," continues the article, "they must sell earlier, then their best course is to sell on the basis that any payment from the War Damage Commission will be received by the purchaser and to enter into a provisional contract to assign any value payment conditional upon the approval of the Commission to such assignment being obtained." It is also pointed out that the considerations governing the desirability of notices of retention or disclaimer under the Landlord and Tenant (War Damage) Acts are similar. Solicitors who feel the weight of these and similar problems will have been glad to learn from the same issue of the *Gazette* that Sir MALCOLM TRUSTRAM EVE, M.C., T.D., K.C., the Chairman of the War Damage Commission, has kindly accepted an invitation from the Council of The Law Society to deliver an address to members of The Law Society on Thursday, 18th November, at 2 p.m. The Commission, it is stated, is engaged on the work of classifying claims for war damage compensation into "total loss" or "non-total loss." Sir MALCOLM'S address will be entitled: "Is it a cost of works or a value payment?" and it will deal primarily with the problem of the kind of war damage payment to be made. When it is known approximately how many members of the Society are to be present, the place of the meeting will be decided and published. Since the passing of the amending Act on 25th March, 1943, altering the basis of calculation of values to that prevailing on 31st March, 1939, much greater certainty has been introduced into the classification of losses and the consequent distribution of value payments and cost of works payments, and many of the Practice Notes, First Series, will have to be revised to accord with the new state of the law. The address of the Chairman, with its invitation to questioners, will therefore be both timely and welcome.

Recent Decisions.

In *R.* v. *Lecky*, on 1st November (*The Times*, 2nd November), the Court of Criminal Appeal (the LORD CHIEF JUSTICE, CHARLES and HALLETT, JJ.) held, in a murder appeal, that although there was a great deal of evidence on which it was open to the jury, properly directed, to find that the appellant committed the crime with which he had been charged, the fact that the learned judge at the trial put to the jury the consideration that they might infer the appellant's guilt or find it by considering the facts of his silence after being cautioned, was a misdirection, and it was impossible to say that the jury, on a proper direction, would inevitably have come to the same conclusion as they did, so as to enable the court to dismiss the appeal under s. 4 of the Criminal Appeal Act, 1907, on the ground that no substantial miscarriage of justice had occurred. The conviction was quashed.

In *Luborsky* v. *Snelling*, on 3rd November (*The Times*, 4th November), the Court of Appeal (SCOTT, MACKINNON and GODDARD, L.JJ.) held, in an action by a widow under the Fatal Accidents Act, 1846, against the driver of a vehicle whose wrongful act was alleged to have caused the death of her late husband, that a plea put forward by the Co-operative Insurance Society, Ltd., that the action was barred owing to not having been brought within twelve calendar months after the death, was not open to the respondent, as liability had definitely been accepted by the respondent and the insurance company before the issue of the writ, and it had been agreed by the appellant's solicitors and the insurance society that a writ would have to be issued in any event, because the court would have to approve and apportion the quantum of damages. That was just as much a contract not to plead s. 3 of the Act as if it had been put into those words. SCOTT, L.J., said that, in his opinion, to take the point was discreditable, if not dishonest, on the part of the insurance society. The case fell wholly within the decision of the Court of Appeal in *Wright* v. *John Bagnell* [1900] 2 Q.B. 240.

In *R.* v. *Archbishop of Canterbury*, on 5th November (*The Times*, 5th November), a Divisional Court (the LORD CHIEF JUSTICE and CHARLES and HALLETT, JJ.) heard a motion for *certiorari* to bring up for review the decision of the late Bishop of Bath and Wells refusing to approve the applicant as vicar of a living, the right of presentation to which was left to him by his father, and mandamus to the Archbishop of Canterbury to hear and determine the matter according to law. The applicant had asked the Archbishop to "review" the Bishop's decision under s. 3 (2) (ii) (*b*) of the Benefices (Exercise of Right of Presentation) Measure, 1931. The court held that the "review" did not mean "appeal," and was not subject to the orders of the court, and in any case the right of application for a review was given to the patron as such and not to the presentee. The only thing to be considered was the interest of the benefice, and there was no analogy with judicial proceedings. The court dismissed the motion.

In *Molyneux et Cie, Ltd.* v. *Fairey and Wife*, on 5th November (*The Times*, 6th November), LEWIS, J., held, in an action for goods sold and delivered, that a dressmaking company had never looked to the husband defendant for payment, that the husband had given his wife a sufficient allowance to cover her needs, and that in any case the year 1940 was not a year in which a superabundance of dresses could be called a necessity. The defendant wife had spent £749 with the plaintiffs alone between February and August, 1940.

A Conveyancers' Diary.

Receivers under the Law of Property Act

UNDER s. 101 (1) (iii) of the Law of Property Act, 1925, a mortgagee, where the mortgage is by deed, has a "power to appoint a receiver of the income of the property, or any part thereof; or, if the mortgaged property consists of an interest in income or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof." Such power arises "when the mortgage money has become payable." This power is exercisable whether or not the mortgagee has gone into possession and the consequences of its exercise are the same whether that has occurred or not (see *Refuge Assurance Co., Ltd.* v. *Pearlberg* [1938] Ch. 572, 687).

Section 109 of the Act provides for the position of such a receiver. Although by s. 101 the power arises where the mortgage is by deed and when the mortgage money has become due, s. 109 (1) imposes the restriction that it is not to be exercised unless the statutory power of sale has become exercisable. That remits us to s. 101 (1) (i), whereby the statutory power of sale also arises, "when the mortgage money has become due," and thence to s. 103, which provides that it shall not be exercised unless one of three things has happened, viz., default of three months in payment of the mortgage money after service of a notice requiring payment, or default of at least two months in payment of interest, or breach of some statutory or contractual duty of the mortgagor other than that of paying the mortgage money and interest.

Shortly, then, a receiver may be appointed by the mortgagee where (*a*) the mortgage is by deed; and (*b*) the mortgage money is due; and (*c*) there has been a default of the mortgagor in one of the matters referred to in s. 103. Such an appointment is to be made by writing under the mortgagee's hand (s. 109 (1)), and the receiver may be removed and another one appointed in like manner (s. 109 (5)).

The receiver, when appointed, is deemed to be the agent of the mortgagor, not of the mortgagee who appoints him (s. 109 (2)). The subsection goes on to provide that the mortgagor is to be "solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides," which it usually does not. Under the following subsection the receiver is empowered to collect (by process or otherwise) all the income of which he is appointed receiver and give good receipts for it, and persons paying him are not concerned to "inquire whether any case has happened to authorise the receiver to act." By subs. (6) he is entitled to retain a commission of 5 per cent., or some lesser rate if that is fixed, of his receipts; this percentage is to cover his costs, charges and expenses as well as his remuneration. (In passing, it may be as well to remark that there does not seem to be any real reason why equity should so frown on the remuneration of trustees when the Act provides it for receivers whose responsibility is necessarily very much less, as they do not touch anything except income.) By subs. (7) provision is made for the receiver to insure the property if so directed by the mortgagee.

Subsection (8) lays down what he is to do with the money which he receives. The section contains five numbered subdivisions, which I conceive to lay down the order of priority, though I cannot find that it has anywhere been distinctly so decided. The main reason for my thinking so is that the last of the sub-divisions refers to discharge of the principal money, which could hardly be a destination ranking *pari passu* with the other four. The matter is not very clear, however. The opening words of the subsection are "Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:" then follow the numbered sub-divisions. The subsection concludes with a provision that the "residue, if any" of the receiver's receipts is to be paid to the person who, but for the receivership, would have been entitled to the income. Sub-division (i) relates to the "discharge of all rents, taxes, rates and outgoings whatever affecting" the property. Next comes the keeping down of "all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in respect whereof he is receiver." The third heading is "In payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee." On the footing that the subsection lays down priorities, it is important to note the comparatively low place taken by repairs. In a case where the taxes or prior interest are large, there may be nothing left for keeping up the value of the mortgagee's security. Fourth, comes payment to the mortgagee of his interest, and fifth, the discharge of the principal if the mortgagee so directs in writing.

In *Liverpool Corporation* v. *Hope* [1938] 1 K.B. 751, the corporation proceeded against a receiver for payment of arrears of rates accrued before his appointment. He had paid those falling due after his appointment. In the Court of Appeal the corporation failed for two reasons: first, which need not detain us, that no action lies for rates, the only remedy of the authority being distress; second, that "there is no semblance of a statutory duty to the corporation, no breach of that duty, and no damages flowing from it" (*per* Scott, L.J., at p. 755). The corporation had sought to argue that s. 109 (8) (i) of the Law of Property Act created a statutory duty of the receiver to pay, *inter alia*, the rates, and that an action lay for breach of it on the general principle enunciated by the Court of Appeal in *Groves* v. *Lord Wimborne* [1898] 2 Q.B. 402. (That was quite a different sort of case, being one in which it was held that an action lay at the suit of a workman who had been injured by machinery which was unfenced, contrary to a duty laid by statute upon the employer. But the principle was made clear: a person for whose benefit the statutory duty is owed, as was the case of the workman, is entitled to bring an action for damages to himself flowing from breach of such duty, unless it is clear from the language of the Act that the criminal sanction is to be the only one). In the *Liverpool Corporation* case the Court of Appeal expressed the opinion that the duties under s. 109 (8) are duties arising from "a power incident to the estate or interest of the mortgagee, and for the sake of clarity, is there stated rather than being fully written out in the mortgage deed as between the parties to the mortgage." The subsection simply regulates the disposition of the money as between the parties to the mortgage. It does not confer on third parties any new right; in particular, it does not give local authorities a right to recover by action that which they can only recover by distress.

But, as between the mortgagee and the receiver, the latter has a duty which can be enforced by action, despite the receiver being, by subs. (2), the mortgagor's agent. This point was dealt with by Bennett, J., in *Leicester Permanent Building Society* v. *Butt* [1943] Ch. 308. In that case the plaintiffs were mortgagees under four mortgages. In each case they duly appointed the defendant to be receiver, after getting the leave now necessary under the Courts (Emergency Powers) Act. They duly directed him in each case to pay the surplus receipts towards discharge of the principal moneys. Butt acted as receiver for some time, but failed to account to the plaintiffs, despite numerous requests. A writ for an account, and payment of the amount found due, was then issued, to which the defendant did not appear. Then a summons was isued for a summary account under R.S.C. Ord. XV: this summons came before the judge in chambers and was adjourned in court for argument; the defendant did not appear at any stage. Bennett, J., stated that the proceedings were based on the proposition that "a person who is interested in the performance of a statutory duty may maintain an action for breach of it against a person who is made liable by statute to perform it" (*Groves* v. *Lord Wimborne*, above). He referred to a case, *Woods* v. *Winskill* [1913] 2 Ch. 302, in which Astbury, J., had applied this rule in favour of certain preferential creditors against a receiver appointed by debenture-holders, who, with notice of the preferential claim, had dissipated the assets. The learned judge also referred to *Liverpool Corporation* v. *Hope*, *supra*, observing that "Liverpool Corporation were not persons who belonged to a class of those for whose benefit and protection the Act imposed the duty." Finally, he said that the case before him was different, in that the mortgagees were clearly members of a class for whose benefit the Act imposed a duty. He therefore made the order asked for under Ord. XV.

Clearly, the mortgagor could maintain an action of this kind as well as the mortgagee; so, no doubt, could a subsequent mortgagee, at least if circumstances had arisen in which the surplus moneys in the receiver's hands were payable to him. But I doubt whether a prior mortgagee could do so. It is true that the payment of his interest is directed by s. 109 (8) in priority to the payments to the mortgagee who appoints the receiver. But I do not think that that duty is imposed for his benefit; rather, it is to protect the mortgagor from the consequences of those moneys being diverted to a later mortgagee. I think the prior mortgagee is in no better position than Liverpool Corporation.

Obituary.

MR. JOHN HAGUE.

Mr. John Hague, solicitor, of York, died recently. He was admitted in 1903, and has been a member of the Yorkshire Law Society since 1905.

MR. H. W. LARKIN.

Mr. Herbert William Larkin, solicitor, of Portsmouth, died recently, aged fifty-three. He was admitted in 1935.

MR. W. F. WAKEFORD.

Mr. William Frederick Wakeford, solicitor, of Messrs. Martin and Co., solicitors, Abingdon Street, Westminster, S.W.1, died recently, aged seventy-nine. He was admitted in 1887.

MR. H. E. WALTON.

Mr. Herbert Edward Walton, solicitor, of Huddersfield, died on Saturday, 30th October, aged seventy-four. He was admitted in 1893.

Book Received.

The Death Duties. By ROBERT DYMOND. First Supplement to the Ninth Edition. 1943. pp. 8. London: The Solicitors' Law Stationery Society, Ltd. 1s. net.

Landlord and Tenant Notebook.

Covenant to reside on premises.

In my article on *Destruction and Frustration* in the "Notebook" of 9th October (87 Sol. J. 360) I suggested there might be covenants, the performance of which was not excused by the Landlord and Tenant (War Damage) Act, 1939, though the result of war damage. The covenant discussed in that article was one by which the tenant undertook to stack on the premises all hay and straw arising from the demised farm, consume it on the farm, and spread upon the farm all dung and manure arising therefrom (*Re Hull and Lady Meux* [1905] 1 K.B. 588 (C.A.)). A covenant to reside on the premises is likewise one imposing obligations, the fulfilment of which might be rendered impracticable or impossible as the result of an air raid, and the circumstances might be such that, though the premises were unfit within the meaning of the Act, it might not be to the tenant's advantage to disclaim the lease.

Covenants to reside are usually met with in leases of farms and in leases of public houses. In the former case, but not in the latter, special provision is made by the Landlord and Tenant (War Damage) Act, 1939, for the events visualised above. By s. 19 "where any buildings or works comprised in an agricultural lease or mining lease . . . are unfit by reason of war damage, the court may, on the application of the tenant, either determine the lease *or modify the terms* thereof, whether by reducing the rent payable thereunder *or otherwise*, according as appears just having regard to all the circumstances of the case." "Agricultural lease" is defined, in s. 24, by reference to the definition contained in the Rating and Valuation (Apportionment) Act, 1928; more widely, that is, than by the A.H.A., 1923; and by the same section "unfit," in relation to buildings, means "unfit for the purpose for which those buildings were used or adapted for use immediately before the occurrence of the war damage . . ." So the tenant farmer who is at last finding agriculture profitable but whose farmhouse is destroyed by a bomb may seek relief without attempting to disclaim his lease, and if that lease contains a covenant obliging him to reside on the premises may ask for its suspension or extinguishment. But no such remedy is available to the publican whose living accommodation may have been destroyed while bars, where business is flourishing, remain unscathed; his only hope, if his landlord should be obdurate, appears to be the liberal interpretation of the covenant to reside, on the lines of *Re Hull and Lady Meux*, *supra*.

Generally speaking, covenants to reside have not given much trouble. One would have expected to find cases in which it was complained that the covenant was not merely onerous but oppressive, savouring of serfdom, and consequently contrary to public policy. Only in Ireland, however, have such considerations been urged: in *Ponsonby* v. *Adams* (1770), 2 Bro. P.C. 431, the facts were that a lease was granted for three lives but renewable for ever, the tenant covenanting that he and his heirs should with all their family within one month after the commencement of the lease live on the premises, and during the continuance thereof, and during the continuance of every other lease made. A penal rent, expressly made recoverable by distress, and a right of re-entry provided additional sanctions. The grantee was succeeded by his son, who sub-let part of the property, and later on quitted the part retained; the sub-tenant paid the penal rent for a time, then refused it, and when the landlord distrained replevied, and sought relief in equity. At first instance he obtained a decree, including an order for the recovery of penal rents already paid, and an injunction against continuing the replevin action; but this was reversed on appeal, despite arguments that the covenant was "repugnant to the estate demised; contrary to reason; in restraint of natural liberty; and against the policy of the realm."

But most of the cases in which the covenant has figured have been cases illustrating some more general proposition. The earliest is, I think, *Sawyer* v. *Hardy* (1595), Poph. 99, which was essentially concerned with the true construction of a condition resolutive: a lease was granted to a widow for a term of forty years if she should so long continue a widow and dwell and stay on the premises; she died during the term, still a widow and still resident; and her executor successfully claimed the residue, the court refusing to read the condition as tantamount to "if she so long lived."

Talem v. *Chaplin* (1793), 2 Hy. Blac. 133, shows the covenant functioning in the ordinary way in the case of a farm. It ran: "that he the said [tenant] his executors and administrators should and would constantly during the demise with his and their family and servants reside, inhabit, and dwell in and upon the said demised messuage or tenement, farm and lands, and in default thereof would pay or cause to be paid . . ." providing for a penal rent of £5 per month. The term was assigned to the defendant, and the question in the action was whether the covenant ran with the land. It was held that it did, being annexed and appurtenant to the thing demised.

No question appears ever to have been raised about the meaning of that much debated term "family" in these cases. The next two authorities which I propose to note deal with the construction of particular instruments in circumstances in which the covenantors left their holdings by reason of financial difficulties. *Doe d. Duke of Norfolk and Ibbetson* v. *Hawke* (1802), 2 Ea. 481, is not, strictly speaking, a landlord-and-tenant case, but it contains authority on the meaning of "refuse to dwell and keep in his own possession." One A. Ibbetson was left, by his uncle's will, the tenant right of a farm held by lease under the Duke of Norfolk, "but not to dispose of or sell the tenant right to any other person; but if he refuses to dwell there himself, or keep in his own possession, then my will is that J. Ibbetson shall have the tenant right of the farm." A. Ibbetson deposited his lease to secure a loan, and later confessed judgment to the lender; but then another execution creditor levied execution under which the lease was seized and sold to the defendants, A. Ibbetson making his departure shortly before the sale. It was argued that "refuses to dwell" should be construed strictly, and did not apply to ceasing to dwell by compulsion of law. The court held that the quitting was the legal consequence of voluntary acts. In *Doe d. Lockwood* v. *Clarke* (1807), 8 Ea. 185, the lease contained, not a covenant, but a qualification of the habendum: twenty-one years if the tenant and his executors, etc., should so long continue to inhabit and dwell with his and their family and servants in the farmhouse. The tenant went bankrupt, and his assignees sold the lease. Lord Ellenborough, C.J., held that the term had automatically come to an end and rejected a plea that it was a case of forfeiture (the landlord had not formally re-entered). In the light of later authorities, the most recent being *Quesnel Forks Gold Mining Co.* v. *Ward* [1920] A.C. 222, the validity of the decision on the forfeiture clause point is open to question.

More recent cases concern leases of licensed premises. In *Re Lander and Bagley's Contract* [1892] 3 Ch. 41, the intending lessee under an agreement for a three years' lease of such premises, to be renewable for a further ten years at his option, objected to the insertion of a covenant "to reside on the premises and personally conduct the business," as well as to a covenant not to assign without consent, not expressly provided for in the contract. It was held that the intending lessor was entitled to neither, Chitty, J., applying a decision of Lord Eldon, *Henderson* v. *Hay* (1792), 3 Bro. C.C. 632, in which the learned Lord Chancellor held that the nature of the property was irrelevant.

Jenkins v. *Price* [1908] 1 Ch. 10 (C.A.), also concerned a public-house, but the decision is of more general application: It was held that a lease containing a covenant for personal residence could not be assigned to a limited company.

Lastly, it is of interest to note that one reason for the desire of lessors of licensed premises to insert this covenant can be gleaned from *Mills* v. *Cannon Brewery Co., Ltd.* [1920] 2 Ch. 39 (C.A.). The landlords in that case objected to an assignment of a lease, which did not contain the covenant, to an assignee who did not intend to reside on the premises, explaining their attitude by that of licensing justices, whose rule it was "in many cases" not to grant licences except upon residential conditions. P. O. Lawrence, J., held that a refusal based upon such ground was wholly unreasonable.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Death of Cattle.

Q. A tenant of an agricultural holding under a written agreement holds, subject to an exception of the landlord of timber, etc., with right of entry for the landlord and all persons authorised by him, and to carry away the timber and underwood, "the landlord making to the tenant compensation for any unreasonable damage occasioned thereby." Pursuant to this exception, the landlord's workmen entered the holding and felled oak trees in meadows in which the tenant had cattle grazing. Six of these cattle have died and it has been found that the cause of death was from eating oak leaves and acorns. The tenant contends that the proper practice is to burn the foliage felled to prevent cattle consuming leaves and acorns. Has the tenant in the circumstances any claim against the landlord, in contract or in tort, and so far as claiming in contract is concerned having regard to the reservation of the timber rights? What difference, if any, would there be in the tenant's rights if he knew that the oaks had been felled in the meadow in question and that the foliage had not been destroyed and, notwithstanding, he allowed the cattle to continue grazing in the meadow?

A. The facts entitle the tenant to claim compensation for "unreasonable damage occasioned thereby" under the clause quoted in the query. The damage in question is not too remote. If the tenant knew of the state of affairs, but nevertheless allowed the cattle to graze, he could not claim. The damage would not then be "unreasonable." If the claim were in tort, the landlord could plead contributory negligence by the tenant, if the latter permitted the grazing to continue with knowledge of the foliage being uncleared.

To-day and Yesterday.

LEGAL CALENDAR.

November 8.—No one was more surprised and shocked than the Girondins, the idealistic intellectuals who dominated the first stages of the French Revolution, when they realised the nature of the bloody beast they had raised. Too late, they found that in mining the foundations of the old order they had blown the ground from under their own feet and destroyed their own authority. Fine speeches and noble theories proved no protection when the extremist minority in the National Assembly, backed by the force of the Paris mob, began howling for their blood too. Chief among the objects of their rage were the brilliant and beautiful Madame Roland and her husband, who as Home Secretary in the last dark days of the monarchy had been, thanks largely to her stimulus and encouragement, well to the fore in supporting the most advanced measures. For a brief spell her wit and grace and enthusiasm made her the uncrowned queen of Paris, but as the tide of violence rose beyond control she and her friends were overwhelmed. On the 8th November, 1793, she was tried before the Revolutionary Tribunal on a charge of plotting against the Republic, one and indivisible. The result was a foregone conclusion. Systematically browbeaten, interrupted, silenced when she tried to answer questions, she was condemned to death and executed the same day. On a cold, grey evening she rode to the scaffold in the last of a procession of tumbrils, perfectly calm and courageous, and her last words echo to-day: "O Liberty, what crimes are committed in your name!"

November 9.—With a practice at the Bar, to which he was called by the Middle Temple in 1830, Richard Sewell combined a brilliant academic career. He became a Fellow of Magdalen College, Oxford, senior dean of arts, bursar, vice-president and praelector of natural philosophy. At the same time he practised on the Western Circuit and at the Hampshire Sessions. Later in life he went to Australia where he practised in the criminal courts. In 1857 he was appointed reader in law to the University of Melbourne. He died on the 9th November, 1864. His legal writings covered a wide field, Church law, the law relating to voters, the law relating to sheriffs, the law relating to coroners and very many other topics.

November 10.—On the 10th November, 1749, "a court martial was held on board the *Monarch* man-of-war in Portsmouth Harbour, Sir Edward Hawke president, when an officer was tried for disobeying orders and sentenced to be suspended from His Majesty's service for a year."

November 11.—The introduction of machine manufacture into England was not effected without popular resistance, and in October, 1779, a serious riot took place near Preston when the cotton mills were attacked. On the 11th November, at the Preston Quarter Sessions, it was unanimously agreed that the machines had been of the greatest utility to the County of Lancashire in extending and improving the cotton manufactory and that destroying them in one place would only lead to their erection in another. The court resolved to transmit a copy of the proceedings to the Secretary of State and request a special commission for the trial of the ringleaders then in Lancaster Gaol.

November 12.—On the 12th November, 1748, a cause depending in Chancery between two seamen named Baldwin and Alder, belonging to the *Prince Frederick* and the *Duke* privateers, and one Rochfort, who had purchased their share in two rich prizes, the *Marquis d'Antin* and the *Louis Erasmus*, was determined in favour of the former and the bills of sale made by them of their prize money set aside.

November 13.—The "Waltham Blacks" were a gang who carried on organised deer stealing and poaching on a large scale in the parks of the nobility and gentry. They got their name from their practice of blackening their faces as a disguise and from an exploit in which they murdered the Bishop of Winchester's keeper on Waltham Chase. They became such a menace that, in 1722, a special Act of Parliament was passed imposing the death penalty on anyone found in any forest, chase or park having his face blacked or otherwise disguised or unlawfully and wilfully hunting, wounding, killing or stealing any red or fallow deer. Soon after, some of the gang were caught, and on the 13th November, 1723, they were brought to trial in the Court of King's Bench, convicted and condemned to death. An odd circumstance was that after sentence was pronounced the man who had shot the keeper lost his speech and only recovered it the day before his death.

November 14.—In 1746 there was a public clash between a naval court martial sitting at Deptford and the Court of Common Pleas. When the court martial assembled on the 16th May, the President, Rear-Admiral Perry Mayne, announced that the day before, a writ of *capias* issued out of the Court of Common Pleas had been served on him at the suit of a Mr. Fry, who complained of a sentence passed on him by a court martial in the West Indies, on which the Rear-Admiral had sat. The upshot was that the members of the court wrote to the Lords of the Admiralty complaining in extravagant terms of Chief Justice Willes, accusing him of violating the law and disregarding the security of the realm while England was at war. Six months later, however, they wrote an apology which, on the 14th November, was received in the Common Pleas and enrolled. The Chief Justice said: "Although the injury I received might have required a private satisfaction, yet as the offence was of a public nature and offered to the whole Court of Common Pleas as well as myself, I thought it more consistent with my character and the dignity of the post which I have the honour to fill to have satisfaction in this public manner, and desire with the concurrence of my brothers that it may be registered in the remembrance office as a memorial to present and future ages that whoever set themselves up in opposition to the laws, or think themselves above the law, will in the end find themselves mistaken, for we may with great propriety say of the law, as of truth, *magna est et praevalebit*."

Obscure Provisions.

At Edmonton County Court recently Judge Gordon Alchin, referring to the interpretation of part of a statutory order, said that after you had read it sixteen times "you get a different impression than when you have read it only once, and begin to grasp its real meaning. Learned counsel does not agree with me yet because he has not read it sixteen times." This particular order begotten by the Ministry of Labour out of the Defence Regulations was, as the judge remarked, only a grandchild of Parliament. In the matter of obscurity, it followed statutory tradition which had provided generations of judges with not unjustified ground for complaint. In 1876 Cockburn, C.J., denounced the statutes in general as "more or less unintelligible by reason of the uncouth, barbarous phraseology in which they are framed." Nearly three centuries before, Coke, C.J., had declared that "if Acts of Parliament were after the old fashion penned and by such only as perfectly knew what the common law was before the making of any Act of Parliament concerning that matter . . . then should very few questions in law arise and the learned should not so often and so much perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences and provisoes as they now do." Mr. Baron Martin once echoed the same sentiment when he brushed aside an Act of Parliament with the words: "Take it away. The man who drew that Act knew nothing of the law of England." Lord Hewart once revealed one motive for statutory obscurity when he reported the admission a Law Officer had made to him that a certain provision was obscurely drafted for the express purpose of getting it past the House of Commons committee, since had it been intelligible it would not have gone through.

Practice Direction.

Practice Direction of the Chancery Judges on Applications for Leave to Serve Notice of Motion with Writ.

On and after the 1st December, 1943, applications under Order 52, rule 9, for leave to serve any Notice of Motion with the Writ or at any time after service of Writ and before the time limited for appearance has expired shall be made to the Master.

On making the application the Solicitor must produce to the Master the original Writ.

No certificate for the attendance of Counsel on these applications will be given.

Applications for leave to serve short Notice of Motion under Order 52, rule 5, must still be made to the Judge.

A. H. HOLLAND,
Chief Master.

3rd November, 1943.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Michaelmas Sittings, 1943.

Rota of Registrars in attendance on

Date.		Emergency Rota	Appeal Court I.	Mr. Justice Bennett
Monday,	Nov. 15	Mr. Blaker	Mr. Hay	Mr. Harris
Tuesday,	,, 16	Andrews	Harris	Blaker
Wednesday,	,, 17	Jones	Blaker	Andrews
Thursday,	,, 18	Reader	Andrews	Jones
Friday,	,, 19	Hay	Jones	Reader
Saturday,	,, 20	Harris	Reader	Hay

Date		Group A. Mr. Justice Simonds *Non-Witness*	Mr. Justice Cohen *Witness*	Group B. Mr. Justice Morton *Witness*	Mr. Justice Uthwatt *Non-Witness*
Monday,	Nov. 15	Mr. Jones	Mr. Reader	Mr. Blaker	Mr. Andrews
Tuesday,	,, 16	Reader	Hay	Andrews	Jones
Wednesday,	,, 17	Hay	Harris	Jones	Reader
Thursday,	,, 18	Harris	Blaker	Reader	Hay
Friday,	,, 19	Blaker	Andrews	Hay	Harris
Saturday,	,, 20	Andrews	Jones	Harris	Blaker

The Directors of the Legal and General Assurance Society, Ltd., have declared an interim dividend for the year 1943 at the same rate as for the previous year, namely 1s. per share, less income tax, payable on the 1st January, 1944.

Notes of Cases.

CHANCERY DIVISION.

In re **Payne; Westminster Bank, Ltd.** *v.* **Payne.**

Uthwatt, J. 12th October, 1943.

Will—Construction—Bequest of income to widow—Estate includes five future annual payments under service agreement—Whether capital or income.

Adjourned summons.

The testator was employed by P., Ltd., and under his service agreement dated the 29th June, 1939, he was paid a fixed salary of £600 a year and by way of additional remuneration a share of the net profits of the company in each financial year. In the event of his death, his personal representative was to be entitled to receive for a period of five years from the date of his death his share of the net profits. The testator by his will dated the 14th September, 1934, provided: "I devise and bequeath a life interest in, and the use and enjoyment of all my property whatsoever and wheresoever, and the beneficial ownership of the income arising therefrom during her life, unto my said wife J, free of all death duties," and after her death he gave his residuary estate to his brothers and a sister. The testator died on the 28th July, 1941. This summons was taken out by his trustees asking whether the annual sums payable under the service agreement were to be treated as income of the estate.

UTHWATT, J., said that all the payments under the agreement were remuneration for past services of the testator. If the matter were looked at apart from authority, could it be said that these sums payable for a short period (for five years was a short period) came within the bequest to the widow. As a matter of English, it appeared to him that the bequest proceeded on the footing that the widow was to have the fruit which arose from an asset comprised in the testator's estate. It was the fruit and not the asset which was given to her. He was confirmed in that view by the judgment of Bennett, J., in *In re Fisher*, 87 SOL. J. 372. *Crawley* v. *Crawley*, 7 Sim. 427 approved; in *In re Whitehead* [1894] 1 Ch. 679, was in accordance with the view he had expressed. In *In re O'Hagan* [1932] W.N. 188, and *In re Sherry* [1913] 2 Ch. 508, there was a trust for sale with power to postpone. It might well be that upon the true construction of a common form trust for sale and a common form power to postpone sale the phrase "income of my estate" in those clauses meant "income which happens to be part of my estate" and not "income derived from my estate." On that footing he had no quarrel with those cases. Here, where he had a plain direction which dealt with income derived from the estate, he failed to see how it was possible to say that the payments derived from P., Ltd., were income of the estate. They were part of the estate and not the income of it. The sums must be apportioned between capital and income on the principle of the *In re Earl of Chesterfield Trusts*, 24 Ch. D. 643.

COUNSEL: *Wilfrid Hunt; Geoffrey Cross; Waite.*

SOLICITORS: *Nordon & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Donn's Will Trusts; Donn** *v.* **Moses.**

Uthwatt, J. 19th October, 1943.

Will—Construction—Condition subsequent—Gift over on marriage to person not of Jewish faith—Validity.

Adjourned summons.

The testator by his will dated the 4th April, 1921, gave all his residuary estate to his trustees upon trust for sale and conversion and to invest the net residue. He directed them to hold his residuary estate, subject to the payment of certain annuities, upon trust for his children and to pay the income of each child's share to that child for life, with remainder to its children. By cl. 17 it was provided: "If any child of mine shall intermarry with any one not of the Jewish faith or if any child of mine shall intermarry with any one whose parents were not of the Jewish faith at the time of the birth of the person so intermarrying with any child of mine or if such last-mentioned person shall at any time previous to such marriage have been of any faith other than the Jewish faith then and in any and every such case during the life of such child one half part of the income" was to accrue to the shares of the other children. The testator died on the 18th June, 1921. He was survived by seven children, two of whom had since married persons whom it was not suggested were members of the Jewish faith. The trustees of the will took out this summons asking whether the provisions of cl. 17 was valid.

UTHWATT, J., said that conditions subsequent in order to defeat vested interests must be such that from the moment of their creation the court could say with reasonable certainty in what event the forfeiture would occur (*In re Sandbrook* [1912] 2 Ch. 471, *per* Parker, J.). In *In re Blaiberg* [1940] 1 Ch. 385, Morton, J., held void a condition to the effect that, should any child or grandson of the testator marry any person not of the Jewish faith, such child or grandchild should forfeit his interest. In *Clayton* v. *Ramsden* [1943] A.C. 320; 86 SOL. J. 384, the House of Lords had to consider a condition of forfeiture upon marriage with a person not of Jewish parentage and not of the Jewish faith. That condition was held to be void. All the law lords held that the condition relating to "Jewish parentage" was void for uncertainty. Lord Atkin and Lord Thankerton agreed with Lord Romer, who said: "I cannot avoid the conclusion that the question whether a man is of the Jewish faith is a question of degree. The testator has, however, failed to give any indication what degree of faith in a daughter's husband will avoid, and what degree will bring about, a forfeiture of her interest in his estate. In these circumstances the condition requiring that a husband shall be of the Jewish faith would, even if standing alone, be void for uncertainty." This will did not differ from that in *In re Blaiberg, supra*. The testator had not supplied any test of what constituted adherence to the Jewish faith. The condition was accordingly void for uncertainty.

COUNSEL: *G. D. Johnston; Michael Bowes; Hillaby; Cecil Turner; J. A. Reid; H. A. Rose.*

SOLICITORS: *Brown & Woolnough; Zeffertt, Heard & Morley Lawson.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Sutch *v.* **Burns.**

Atkinson, J. 26th July, 1943.

Motor insurance—Third party risks—Driver's negligence during journey unauthorised by insured—Driver's employers held not liable—Driver liable—Unable to pay—Liability of insurer—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *ss.* 10 (1), 35 (1) *and* 36.

Action under s. 10 (1) of the Road Traffic Act, 1934, by a widow to recover from an underwriter at Lloyds damages for which she had recovered judgment in an action under the Fatal Accidents Act, 1846, and the Law Reform (Miscellaneous Provisions) Act, 1934, in respect of the death of her husband. The defendant was unable to pay.

The policy of insurance in respect of which the action was brought was issued to the employers of one Welling, and it was Welling against whom the widow had already obtained judgment. Welling's employers were Convoys, Ltd., and the accident giving rise to the litigation occurred during the currency of the policy when Welling was delivering heavy rolls of paper at the premises of Mono Containers, Ltd., the employers of the deceased. A foreman of Mono Containers asked Welling, who was driving the lorry containing the paper, to load up, as a favour, other rolls of paper and convey them to a branch of Mono Containers a short distance away. It was during that journey that the deceased was killed, owing to Welling's negligence.

ATKINSON, J., asked what could be the point of insisting on the insurance of third persons in charge of vehicles if the insurance was only to cover them when driving in such circumstances that their employers were liable. If the defendant were right in his contention, s. 35 of the Road Traffic Act, 1930 (providing for compulsory third-party insurance) would really amount to nothing. There was no doubt that Welling was specified in the policy, as he was a person permitted to drive; secondly, the policy must be a policy in relation to the use of the vehicle by Welling. There was no limitation on the use. The language of s. 36 (providing for the sort of policy to satisfy the Act) was simple, and it was conceded that the deceased was on the vehicle "by reason of or in pursuance of a contract of employment" with Mono Containers, Ltd. Only one more thing need be said. If there was no estoppel, and his lordship did not decide the estoppel point, he would hold that the employers were answerable for the accident. It arose out of and really in the course of Welling's employment. The very slight deviation was not in any sense a "frolic" of his own, which took the accident out of the realm of his employment. But assuming in the defendant's favour that the plaintiff was bound by the decision that only Welling was liable and not the employers, the plaintiff was still entitled to recover against the defendant. Judgment for the plaintiff for the amount claimed with costs.

COUNSEL: *Montague Berryman; Humfrey Edmunds.*

SOLICITORS: *Gisborne & Co.; Barlow, Lyde & Gilbert.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.

Parliamentary News.

HOUSE OF LORDS.

Income Tax (Employments) Bill [H.C.].
Read Third Time. [9th November.

Parliament (Elections and Meeting) Bill [H.C.].
Read Second Time. [9th November.

Price Control (Regulation of Disposal of Stocks) Bill [H.L.].
Commons Amendments agreed to [9th November.

Prolongation of Parliament Bill [H.C.].
Read Third Time. [9th November.

Rent of Furnished Houses Control (Scotland) Bill [H.C.].
Read Third Time. [4th November.

Statute of Westminster 1931 (Amendment) Bill [H.L.].
First Reading Withdrawn. [4th November.

Town and Country Planning (Interim Development) (Scotland) Bill [H.C.].
Read Third Time. [4th November.

Workmen's Compensation (Temporary Increases) Bill [H.C.].
Read Second Time. [9th November.

HOUSE OF COMMONS.

Consolidated Fund (Appropriation) (No. 2) Bill [H.C.].
Read First Time [9th November.

QUESTIONS TO MINISTERS.

INCOME TAX DEDUCTIONS FROM GROUND RENTS.

Sir WILLIAM WAYLAND asked the Chancellor of the Exchequer the reason for the inequality arising from the rule of the Inland Revenue which permits, in the case of a private company owning ground rents, the deduction of expenses of collection and management before payment of income tax, whereas such deduction is not allowed when similar ground rents are owned by an individual, although he will have to incur an equal expense; and whether he will consider remedying this.

Sir JOHN ANDERSON: The relief to which my hon. friend refers is allowed under a provision of the law, namely, s. 33 of the Income Tax Act, 1918, which is applicable only to companies. I am afraid I cannot see my way to an exension of that provision to the case of the individual who incurs expenses in collecting his income from ground rents or other investments.

Sir WILLIAM WAYLAND: Can the Chancellor say what is equitable? Is it equitable in the one case to give a certain amount of rebate and not in the other case, which is similar on all points?

Sir JOHN ANDERSON: In the case of companies, it is treated as a matter of business, and ranks as business expenses. On the point put by my hon. friend, the law does draw a distinction in other respects between companies and private individuals. [2nd November.

WAR DAMAGE CONTRIBUTION.

Sir FRANK SANDERSON asked the Chancellor of the Exchequer whether, in view of the decline which has taken place in the destruction of property by air raids, he will consider the reduction of the insurance premium paid by the owners of property.

Sir JOHN ANDERSON: No, sir. I would draw my hon. friend's attention to the fact that the contribution now payable is that prescribed in the original War Damage Act in respect of damage done within the first risk period ending 31st August, 1941, only; and that this risk period was extended indefinitely by subsequent legislation without any addition to the contribution. Provisions for its ultimate adjustment either upwards or downwards if that should be necessary, are laid down in s. 80 of the War Damage Act, 1943. [2nd November.

REINSTATEMENT OF REQUISITIONED LAND.

Major LEIGHTON asked the Secretary of State for War whether buildings erected on land requisitioned by his Department will be cleared away before handing back the land to the owner.

Sir JAMES GRIGG: The Compensation (Defence) Act, 1939, prescribes only an obligation to pay compensation in respect of the cost of reinstatement, and in general I regret that I am unable to give any guarantee on the method by which reinstatement will be carried out during or after the war. Where, however, the removal of works serves an essential war-time purpose, for example, by restoring the land to food production, every effort is made to do it. [2nd November.

INLAND REVENUE HEADQUARTERS AND PROBATE REGISTRY.

Mr. LIDDALL asked the Chancellor of the Exchequer whether, in view of the inconvenience which is being suffered by the business community, arrangements can now be made for the return of the Inland Revenue headquarters, particularly the Probate Department and the Companies Register, to London.

Sir JOHN ANDERSON: The considerations which led the Government to order the evacuation of certain staffs from London still hold good and current policy remains, in general, opposed to their return. In a few cases a change of circumstances has made it particularly desirable that staff should return to London, but this is not the case with the headquarters of the Inland Revenue Department. As regards the Principal Probate Registry, which is not part of the Inland Revenue, but is under the Supreme Court of Judicature, I would refer my hon. friend to the answer given to the hon. member for Whitechapel (Mr. W. J. Edwards) on 26th October [*ante*, p. 400]. [2nd November.

COUNTY COURT, HIGH WYCOMBE.

Sir A. KNOX asked the Attorney-General whether, in view of the serious inconvenience and financial loss to litigants, their witnesses and advocates practising in the county court by reason of the journey to Aylesbury under war conditions of transport, arrangements with the Borough Council of Chepping Wycombe will be made with a view to enabling the county court to be held at Wycombe as in the past.

The ATTORNEY-GENERAL: Consultations have been taking place between my noble friend the Lord Chancellor's Department and the Borough Council at Chepping Wycombe and it is hoped that the county court sittings at High Wycombe can now be resumed at an early date. [3rd November.

WIFE'S SAVINGS.

Dr. SUMMERSKILL asked the Attorney-General whether his attention has been drawn to the recent decision in the Appeal Court that a wife's savings from house-keeping are the property of her husband; and whether he will consider amending the Married Women's Property Act, 1882, in order that a wife who exercises thrift may not be penalised and her work in the home given some monetary recognition.

The ATTORNEY-GENERAL: My attention has been drawn to the case referred to which, of course, turned on its own facts. Husband and wife are free to enter into any arrangements with regard to money or other property which they like. In the absence of any special arrangement the balance of money given by one to the other for a special purpose and not used for that purpose belongs, according to ordinary principles, to the giver. With regard to the last part of the question, legislation, even if in principle desirable, would clearly be very difficult. It would have to define the services and provide how the monetary recognition was to be valued. In any case the Government could not in present circumstances consider legislation of this kind. [3rd November.

[*See also "Current Topic" on this point at p. 401 of the current issue.*]

CHAIRMEN AND DEPUTY-CHAIRMEN OF QUARTER SESSIONS.

Mr. BULL asked the Attorney-General whether he will consider making the possession of legal qualifications a condition of the appointment of all chairmen and deputy-chairmen of quarter sessions.

The ATTORNEY-GENERAL: Such a requirement as my hon. friend suggests could only be imposed by statute. During the passage through Parliament of the Administration of Justice (Miscellaneous Provisions) Act, 1938, the question whether such a requirement should be made statutory received careful consideration, and it was decided that the object in view would be obtained with greater expedition and with less friction by the method adopted in that Act. In fact I am glad to inform the House that out of sixty-two courts of quarter sessions the chairmen of fifty-six courts, and the deputy-chairmen of thirty-two courts possess such a statutory qualification as is required by the Act of 1938 and the four chairmen who do not possess such a qualification have great experience in the position in which they occupy and command general confidence. [3rd November.

PROBATION OFFICERS.

Mr. ASTOR asked the Home Secretary how many probation officers there were allocated to the London Juvenile Courts in 1939, 1940, 1941, 1942 and 1943; and how many children were under their supervision during the same periods.

Mr. HERBERT MORRISON: The number of probation officers allocated to the Metropolitan Juvenile Court was:—

On 31st December, 1939—28. On 31st December, 1941—28.
On 31st December, 1940—32. On 31st December, 1942—33.

The number at present so allocated is 36. An additional appointment has recently been authorised.

The number of children and young persons under the supervision of these officers was:—

On 31st December, 1939—1,530.* On 31st December, 1941—1,631.
On 31st December, 1940—1,428.* On 31st December, 1942—1,723.
On 30th September, 1943—1,947.

* Approximate.

JUVENILE DELINQUENTS.

Mr. ASTOR asked the Home Secretary the number of boys and girls between the ages of 11 and 14 brought before the courts in the Metropolitan police area in 1939, 1940, 1941, 1942 and 1943.

Mr. MORRISON: The exact figures for which my hon. friend asks are not available, but the numbers of juveniles aged 11 to 14 years of age inclusive, arrested or summoned for indictable offences in the Metropolitan Police District in the years 1939 to 1942 and in the first nine months of 1943, were as follow:—

1939	2,986
1940	2,518
1941	2,642
1942	2,905
1943 (January to September)	2,633

BIRCHING SENTENCES.

Major Sir EDWARD CADOGAN asked the Secretary of State for the Home Department (1) whether, in view of the strictures passed by the High Court recently in the case of a boy birched by order of a juvenile court, which illustrated the impossibility of reconciling the right of appeal with the rule requiring prompt infliction of the punishment, he will introduce legislation to abolish whipping by order of the juvenile court;

(2) how many sentences of birching were passed by juvenile courts during the last twelve months for which statistics are available; and in how many cases was an appeal made against the sentence.

Mr. HERBERT MORRISON: The number of birchings ordered by summary courts in England and Wales in 1942 was about 300, and there were no appeals. In 1938 the Departmental Committee of which my hon. and gallant friend was chairman reported that:—

"appeals are rare and it has not been found necessary to adopt a practice of postponing the birching till after the expiration of the period within which appeal proceedings could be commenced."

Whether any advice can usefully be given to justices on this aspect of the matter is a question which, as I mentioned in my statement on 21st October, I am considering. The question whether the courts should by an amendment of the law be deprived of power to order birching is—as my hon. and gallant friend knows—controversial; but in the Memorandum on Juvenile Offences sent to justices in June, 1941, they were reminded:

"that the Departmental Committee on Corporal Punishment came unanimously to the conclusion that, as a court penalty, corporal punishment is not a suitable or effective remedy for dealing with young offenders." [4th November.

LAND VALUATION.

Mr. DOUGLAS asked the Minister of Town and Country Planning whether any steps are being taken to give effect to the recommendation of the chairman and four other members of the Committee on Land Utilisation in Rural Areas for the establishment of a valuation showing the value of land and sites.

Mr. W. S. MORRISON: No, sir.

Mr. DOUGLAS: Is it not highly desirable that this instrument of planning should be available.

Mr. MORRISON: That is a matter of opinion, but the recommendation to which the hon. member refers forms no part of the majority Report of the Committee and was, I think, rejected by implication by Mr. Justice Uthwatt's Committee. [4th November.

SUCCESSFUL APPEALS AGAINST COURT DECISIONS.

Mr. JEWSON asked the Home Secretary the number of successful appeals in any recent year against decisions of lay magistrates, stipendiary magistrates and judges, respectively.

Mr. HERBERT MORRISON: The Criminal Statistics do not distinguish in the figure of appeals to quarter sessions between the decisions of stipendiary and lay magistrates. The latest year for which the statistics are readily available is 1938, and in that year 939 out of 778,870 persons found guilty by magistrates' courts appealed to quarter sessions. In 184 cases the conviction was quashed, and in 270 the sentence was varied. In the same year, out of 8,612 persons found guilty at assizes and quarter sessions, 587 applied to the Court of Criminal Appeal, and in thirty-four cases the conviction was quashed, and in forty-three the sentence was varied. [4th November.

JUSTICES' CLERKS.

Mr. TURTON asked the Home Secretary when he expects to receive the Report of Lord Roche's Committee on the Conditions of service of Clerks of Justices.

Mr. HERBERT MORRISON: This Committee had to suspend its sittings on the outbreak of war, but it has recently been able to resume work. I am informed by the Chairman that it is hoped to present a report in the early part of next year. [4th November.

REPAIRS TO WAR-DAMAGED HOUSES.

Lieut.-Colonel DOWER asked the Prime Minister whether, in view of the urgent necessity for repairing war-damaged houses and of the difficulty owners and tenants of such houses have in obtaining an interpretation of the law owing to Ministry of Health circulars, Ministry of Works licensing rules, War Damage Commission instructions and Ministry of Town and Country Planning Orders and other interested authorities' regulations, several of which overlap, he will consider issuing a White Paper showing clearly how the existing law now stands.

Mr. CHURCHILL: Arrangements are being made for the issue of a leaflet giving the necessary guidance in a brief and popular form. This leaflet, when approved, will be available free to all inquirers. [4th November.

Lieut.-Colonel DOWER asked the Parliamentary Secretary to the Ministry of Works whether he is aware that applications to repair damaged houses are frequently not made owing to the serious loss of time and labour involved in supplying plans and other requirements of the Ministry for which there is no compensation if the application is refused; and, in view of the urgent necessity for the provision of houses, whether he will consider paying reasonable costs of preparing plans or making alternative suggestions for carrying out the work by the Ministry in all reasonable cases.

Mr. HICKS: A new application form is being introduced this week which makes it clear that if plans or specifications have not already been prepared, a decision in principle on the application is given and plans and specifications only asked for subsequently if required. The cost of preparing such plans or specifications cannot, in the circumstances, be met from public funds. [4th November.

WAR DAMAGE PAYMENTS FOR INDUSTRIAL AND COMMERCIAL PROPERTY.

Captain GAMMANS asked the Chancellor of the Exchequer whether the cost-of-works payment under the War Damage Act is equally applicable to factory and office property which has been completely destroyed by war damage where such property was erected after March, 1914, or where, in the case of properties erected before that date, the War Damage Commission is satisfied that the structure was practically as sound as at the date of building and that the design and lay-out were reasonably equal to similar buildings erected since 1914.

Sir JOHN ANDERSON: The recent Treasury Direction made under Section 20 of the War Damage Act, 1943, to which my hon. and gallant friend evidently refers, was designed to further the requirements of the public interest as respects the provision of housing accommodation and was specifically restricted to dwelling-house property. At the same time, I would remind my hon. and gallant friend that it does not by any means follow that because an industrial or commercial property is completely destroyed a value payment and not a cost of works payment is appropriate. The classification depends upon the quality of the building destroyed and the value of the site on which it stood. [4th November.

PUBLIC SERVICE VEHICLE ACCIDENTS: CLAIMS FOR DAMAGE.

Mr. J. DUGDALE asked the Parliamentary Secretary to the Ministry of War Transport whether he is aware of the hardship suffered by persons injured as a result of accidents occurring to public vehicles owing to the fact that that they cannot claim damages against the proprietors of the vehicles unless it can be shown that there was negligence; and whether he has any statement to make.

Mr. NOEL-BAKER: Except under the Workmen's Compensation Acts, a claim for damages by a person injured in an accident cannot be made, unless the accident was due to negligence on the part of some other person. I do not think that there is any sufficient reason for amending the law in this respect, in the case of proprietors of public service vehicles. [5th November.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

No. 1540. **Catering Wages.** Wages Board Recommendation (Notices) Regulations, Oct. 20.

E.P. 1533. **Closed Ports.** United Kingdom (Closed Ports) (Amendment) Order, Oct. 25.

E.P. 1524. **Consumer Rationing** (Consolidation) Order, 1943. General Licence, Oct. 29.

E.P. 1572. **Control of Motor Fuel** (No. 3) Order, Nov. 2.

E.P. 1538. **Control of Paper** (No. 62) Order, Oct. 27.

No. 1487. **Customs.** Import Duties (Exemptions) (No. 4) Order, Oct. 28.

E.P. 1551/2. (as one publication). Defence (General) Regulations, 1939. Orders in Council, Oct. 28, amending reg. 9 and adding reg. 58AE (Training, etc., of persons employed in coal mines).

E.P. 1553. **Defence** (Sale of Food) Regulations. Order in Council, Oct. 28.

No. 1460. **Diseases of Animals.** Transit of Horses, Asses and Mules Order, Oct. 11.

No. 1389. **Foreign Jurisdiction.** Egypt (Amendment) Order in Council, Sept. 24.

No. 1544. **Goods and Services** (Price Control). Restriction of Resale. General Licence, Oct. 30, under the Price-Controlled Goods (Restriction of Resale (No. 2) Order, 1942.

E.P. 1532/L.32. **Land Charges, England.** Local Land Charges (Amendment) Rules, Oct. 23.

E.P. 1527. **Police.** Temporary Constables (Emergency) Rules, Oct. 25.

No. 1548/S.49. **Session, Court of, Scotland.** Procedure. Act of Sederunt, Oct. 12, anent the Registration of Photographic Copies of Powers of Attorney in the Books of Council and Session pursuant to the Evidence and Powers of Attorney Act.

No. 1549/S.50. **Sheriff Court, Scotland.** Workmen's Compensation. Act of Sederunt, Oct. 12, anent Proceedings under the Workmen's Compensation Act, 1925.

No. 1550/S.51. **Sheriff Court, Scotland.** Workmen's Compensation. Act of Sederunt, Oct. 12, anent Proceedings under Scheme made in pursuance of s. 47 of the Workmen's Compensation Act, 1925, as extended by the Workmen's Compensation (Silicosis and Asbestosis) Act, 1930, and the Workmen's Compensation Act, 1943.

No. 1491. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 15) Order, Oct. 26.

E.P. 1567. **Turkeys and Geese** (Prohibition of Transport from Northern Ireland) Order, Nov. 1.

E.P. 1554. **Women's Forces.** Order in Council, Oct. 28, amending the Defence (Women's Forces) Regulations, 1941.

COMMAND PAPERS (SESSION 1942-43).

Matrimonial Causes (Trial in the Provinces) Committee (Chairman: Sir Ralph Wedgewood, C.B., C.M.G.). Report, Oct. 25, 1943.

Notes and News.

Notes.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association held at 60, Carey Street, W.C.2, on the 3rd November, Mr. Walter Maclaren Francis (Cambridge) was elected Chairman for the ensuing year, and Mr. Charles H. Culross (London) Vice-Chairman. Grants amounting to £2,110 were made to thirty-six beneficiaries.

The Board of Trade have, with the approval of the Treasury, decided that in respect of the period beginning 3rd December, 1943, and ending 2nd March, 1944, the rate of premium payable under any policy under the Commodity Insurance Scheme shall be at the rate of 5s. per cent. for three months (or 1s. 8d. per cent. per amonth). Note.—The new rate is a reduction of one-third on the rate for the current period.

Queen Mary has accepted the invitation of the Treasurer and Masters of the Bench of the Honourable Society of Lincoln's Inn to become their Senior Bencher, a position occupied by his late Majesty King George V and by the late Duke of Kent. Her Majesty was duly called to the Bar *in absentia* and published to the Bench in Lincoln's Inn Hall by the Treasurer (Lord Justice Luxmoore). This is the first occasion on which a lady has been made a Bencher of any of the Inns of Court.

Where it has been customary for an employer to make Christmas presents in goods to subordinate employees or workpeople and, because of war conditions, he decides this year to make presents of saving certificates or savings stamps of approximately equal value to the usual gift of goods, the Inland Revenue authorities have ruled that the value of the certificate or stamps will, for taxation purposes, be treated as an admissible deduction in computing the employer's profits and will not be regarded as income of the recipient. The gift must, however, be in war savings and must not take the form of cash, and the ruling only refers to Christmas gifts which would normally be made in kind.

Wills and Bequests.

Mr. A. M. Alford, solicitor, of Exeter, left £15,168, with net personalty £11,448.

Mr. Hubert Gerald Fry, solicitor, of Woking, left £31,213.

Mr. Herbert Quekett Louch, solicitor, of Oxshott, left £1,588, with net personalty £535.

Mr. Thomas William Outhet, solicitor, of Scarborough, left £44,799, with net personalty £39,087.

Mr. Harry Yates, solicitor, of Blackburn, left £6,942 gross.
